

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHELA CAMENISCH, et al.,

Plaintiffs,

v.

UMPQUA BANK,

Defendant.

Case No. [20-cv-05905-RS](#)**ORDER DENYING MOTION TO
DISMISS AMENDED COMPLAINT**

Plaintiffs in this putative class action are victims of an alleged Ponzi scheme carried out by Ken Casey through two companies he founded and controlled—Professional Financial Investors, Inc. (“PFI”) and Professional Investors Security Fund, Inc. (“PISF”). Casey is deceased, and PFI and PISF are in bankruptcy. Plaintiffs therefore seek to recover damages from Umpqua Bank, the financial institution that handled all the accounts of PFI and PISF. Umpqua moved to dismiss the original complaint, contending plaintiffs had not alleged sufficient facts to show it had actual knowledge of the Ponzi scheme, that it provided “substantial assistance” to Casey and his companies in the wrongdoing, or that it had knowledge that Casey and the companies were breaching fiduciary duties to plaintiffs. The motion was denied, although the order observed the question was close.

Plaintiffs subsequently filed an amended complaint naming two additional proposed class representatives, but making no substantive changes to any of the other allegations. Umpqua now challenges the amended complaint on two basic grounds. First, in a footnote, Umpqua suggests the

1 amended complaint be stricken, because plaintiffs did not obtain leave of court before filing it.
 2 Plaintiffs, however, respond that the amended complaint was filed before the scheduling order
 3 deadline that permits further amendments only with leave. Umpqua does not press the argument
 4 on reply, nor would it be in Umpqua's interest to do so. Were the amended complaint stricken, the
 5 original complaint would again be operative, and it has already survived dismissal.

6 Umpqua instead focuses on its other argument, which urges the court to reach a different
 7 result than it did at the time of the first motion to dismiss, even though the substantive allegations
 8 are unchanged. To that end, Umpqua relies on an unpublished Ninth Circuit decision, *Paskenta*
 9 *Band of Nomlaki Indians v. Umpqua Bank*, 846 F. App'x 589 (9th Cir. 2021), which issued a few
 10 months after the order denying the motion to dismiss in this case. *Paskenta* affirmed a dismissal
 11 without leave to amend in a case against Umpqua where executive employees of the Paskenta
 12 Band of Nomlaki Indians ("the Tribe") allegedly embezzled millions of dollars from the Tribe's
 13 bank accounts at Umpqua by withdrawing large sums of money for their personal use, over the
 14 course of more than a decade.

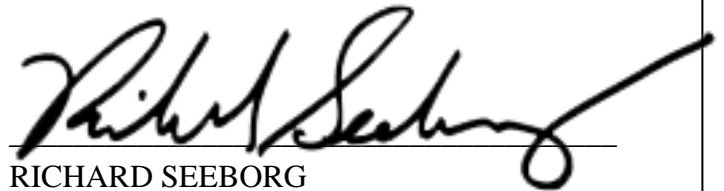
15 Umpqua also relies on the three district court-level dismissals of the complaint
 16 (culminating in the dismissal without leave that was the subject of the appeal.) *See Paskenta Band*
 17 *of Nomlaki Indians v. Crosby*, 122 F. Supp. 3d 982, 990 (E.D. Cal. 2015); *Paskenta Band of*
 18 *Nomlaki Indians v. Crosby*, No. 2:15-cv-00538-MCE-CMK, 2016 WL 1587233, at *6 (E.D. Cal.
 19 Apr. 20, *Paskenta Band of Nomlaki Indians v. Crosby*, No. 2:15-cv-00538-MCE-CMK, 2016 WL
 20 6094468, at *7 (E.D. Cal. Oct. 19, 2016). Umpqua recognizes that the district court decisions and
 21 the unpublished memorandum disposition at the circuit level are not controlling, but it urges they
 22 are all highly instructive. None of them, however, represent new or different law. Indeed, while
 23 the district court opinions all issued prior to the initial motion to dismiss in this case, Umpqua did
 24 not cite them in its prior briefing.

25 Rather, the *Paskenta* decisions represent application of the same basic legal standards to a
 26 slightly different set of facts, with a different ultimate result. As the first order here recognized,
 27 this is a close case at the pleading stage, and it may very well be that plaintiffs will be unable to
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1 establish the requisite knowledge to support liability. While the *Paskenta* decisions may reinforce
2 how close the call was, they do not serve as a basis to reach a different result now, on allegations
3 that have not changed. The motion to dismiss is denied.

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6 **IT IS SO ORDERED.**

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8 Dated: January 20, 2022

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11 RICHARD SEEBORG
12 Chief United States District Judge
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United States District Court
Northern District of California